1951

File No. O. Enhancement of Penalties/57
Legal Department G68/57
& **BRANCH**

Subject:— Opinion on the Bombay Essential Supplies (Temporary Powers) and the Essential Commodities and Cattle control Enhancement of Penalties Act, 1947

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C O N T E N T S.

Legal Department File No. C.Enhancement of Penalties/51 (G.Br.)

Sr.No.	R.I./O.No.	Subject	pages
		Opinions under the Bombay Essential Supplies (Temporary Powers) and Essential Commodities and Cattle (Control)Enhancement of penalties Act, 1947.	
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2.	O.No.G-217 15-5-51. (m.o.r.to Adv. Genl.) R.I.No.G-761 12-9-51. O.No.G-452	Question regarding invalidity of the Bombay Enhancement of Penalties Act with respect to offences committed under the Essential Supplies (Temporary Powers) Act, 1946 .-	3-10.
3.	O.NO /26-9-51. G-528 1-11-51.	Question regarding repealing the Enhancement of Penalties Act .- Whether it would be advisable to do this .-	11-14.

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5 copies.

Statement of the Case.

The Essential Supplies (Temporary Powers) Act, 1946 (XXIV of 1946), was enacted in pursuance of the powers given by the India (Central Government and Legislature) Act, 1946 which has since been adapted after the Indian Independence Act, 1947. But for the enactment of the said India (Central Government and Legislature) Act, 1946, the Province would have exclusive power to make laws relating to trade and commerce in, and the production, supply and distribution of, essential commodities specified in the Essential Supplies (Temporary Powers) Act, 1946. Thereafter the Bombay Government passed the Bombay Essential Supplies (Temporary Powers) and Essential Commodities and Cattle (Control)(Enhancement of Penalties)Act, 1947 (Bom. XXXVI of 1947). The provisions of this Act were repugnant to the provisions of section 7 of the earlier Central Act namely, the Essential Supplies (Temporary Powers) Act, 1946 inasmuch as whereas the Central Act made imprisonment optional and prescribed a ~~mi~~ maximum only of three years, the Enhancement of Penalties Act raised the maximum to 7 years and made imprisonment obligatory which was ordinarily required to be not less than 6 months. The Bombay Act was, however, reserved for the assent of the Governor-General and was published after it had received the assent. It would therefore appear that in accordance with the provisions of sub-section (2) of section 107 of the Government of India Act, the Enhancement of Penalties Act prevailed over the Central Act viz. the Essential Supplies (Temporary Powers) Act, 1946 in the Province of Bombay.

Thereafter, the Dominion Legislature [illegible] Act No. LXIV of 1948. That Act provid[illegible]

espect of contravention of orders relating to
.on Textiles "the Court shall sentence any person convicted of such contravention to imprisonment for a term which may extend to 3 years and may in addition impose a sentence of fine which meant that the maximum was reduced to three years. "Thereafter an Ordinance was passed (Ordinance No. XXXI of 1948) which has been now converted into an Act (No. 19 of 1949) whereby in respect of contraventions of orders relating to foodstuffs the following provision was made -

"The Court shall sentence any person convicted of such contravention to imprisonment for a term which may extend to three years and may in addition impose a sentence of fine, unless for reasons to be recorded. It is of opinion that a sentence of fine only will meet the ends of justice."

This means that in respect of contraventions of orders relating to foodstuffs not only is the maximum reduced to 3 years, but even imprisonment in no longer obligatory, let alone the minimum imprisonment of 5 months as contemplated by the Bombay Act XXXVI of 1947, viz. the Enhancement of Penalties Act, 1947. It must be presumed that as required by the proviso to sub-section (2) of section 107 of the Government of India Act, the previous sanction of the Governor-General was obtained before the aforesaid Central Act of 1948 was introduced or moved in the Dominion Legislature. On the assumption, therefore, that such sanction was given, the Dominion Law, namely the Central Act of 1948 referred to above would prevail even in the Province of Bombay in virtue of the provisions section (1) of section 107 of the

Government of India Act, 1935. In short, therefore, the legal position appears to be that so far as the penalties for offences committed under Essential Supplies (Temporary Powers) Act 1946 is concerned the provisions of section 7 of the said Act as amended by Central Acts 64 of 1948 and 19 of 1949 must prevail over those of the Bombay Enhancement of Penalties Act, with the result that the latter Act ceases to be in force in respect of offences committed under the Essential Supplies Act, 1946.

2. In actual practice, however, in no case so far as it has been contended by anybody that the Enhancement of Penalties Act does not apply to offences under the Essential Supplies (Temporary Powers) Act and presecutions are being launched and penalties inflicted under the Enhancement of Penalties Act. As the point is important, the Advocate-General is requested to state whether the view expressed in the foregoing paragraph regarding the invalidity of the Bombay Enhancement of Penalties Act with respect to offonces committed under the Essential Supplies (Temporary Powers) Act, 1946, is correct.

Sd/- J.R.Dhurandhar
5-6

Remembrancer of Legal Affairs.

U.R. to Advocate General, No. G- 217, dated the 5th May 1951.

S.C. 21/7

4 copies.

U.R. to the Advocate General No. G-217.
dated 5th May 1951.

I agree with the opinion of the R.L.A. as expressed in the statement of the case, if one presumes that as required by Section 107 to proviso of the Government of India Act the previous sanction of the Governor General was obtained before the introduction into the legislature of Act 64 of 1948, then by virtue of Section 107(1) of the Government of India Act the provisions of that law must prevail in the state of Bombay over these of the Bombay Essential Supplies Temporary Powers and Essential Commodity & Cattle Control Enhancement of Penalty Act of1947. Similarly, the provisions of Act 19 of 1949 must prevail over those of the Bombay Act.

As stated above, I think the views expressed by the Remembrancer for legal Affairs are correct.

Sd/-
7-9-51.

Office of the R.L.A .

A copy of the statement of the case and a copy of the Advocate General's opinion thereon, are sent herewith to the Civil Supplies Department with reference to their notes at pages 31-33 ante.

Sd/-

Remembrancer of Legal Affairs.

U.R. to C.S.D. , No. G-452 , dated the 26th September 1951.

S.C. 21/7
4 copies.